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EX PARTE OR LATE FILED

January 13, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: The Independent Alliance
CC Docket Nos. 96-98, 95-185/
Formal Complaints - File Nos. E-98-08, E-98-10
Ex Parte Presentation

Dear Ms. Salas:

The Independent Alliance ("Alliance"), a group of small local exchange carriers ("LECs"), hereby transmits two copies of its Comments¹ previously filed in response to the Commission's *Public Notice*, released May 22, 1997 (DA 97-1071), for inclusion in the record of CC Docket No. 96-98. The Alliance submits that its Comments, summarized below, provide a crucial and necessary supplement to the record in the local interconnection reconsideration proceeding currently before the Commission and will assist the Commission in a logical and rational review and disposition of issues involving LEC-paging compensation arrangements.

On December 30, 1997, the Chief of the Commission's Common Carrier Bureau ("Bureau") released an informal letter (DA 97-2726) in response to letters sent to the Commission in April and May of 1997 by Southwestern Bell Telephone ("SWBT"). These SWBT letters address issues involving the refusal by paging providers to pay LECs for tariffed local services and network facilities the paging providers ordered and use to provide services to their customers. In its December 30 letter, the Bureau concluded summarily that LECs are not permitted to assess charges on commercial mobile radio service ("CMRS") providers, including paging providers, to recover the costs of facilities that are used to deliver traffic to CMRS providers.

¹ Comments of the Independent Alliance, filed June 13, 1997, in CPD 97-24, In the Matter of Requests for Clarification of the Commission's Rules Regarding Interconnection Between LECs and Paging Carriers.

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The Alliance Comments further demonstrate the soundness of SWBT's position that Section 51.703(b) of the Commission's Rules (47 C.F.R. § 51.703(b)) governs only the charges for "transport" and "termination" of "traffic" between carriers that satisfies the specific conditions set forth in Section 51.701 (47 C.F.R. § 51.701) and does not prevent LECs from charging for the facilities used by paging providers.

The Alliance recognizes that the informal letter recently issued by the Bureau was intended merely to reiterate the rule that prescribes that a LEC cannot charge a paging carrier for transport and termination on the paging carrier's network. Unfortunately, the Bureau's letter has been misinterpreted and used to bolster a theory that LECs should provide paging carriers network facilities and services for free and then possibly pay the paging carrier for calls over those facilities.

The Bureau's letter is presently being misused to support this theory and therefore creates confusion and uncertainty in the already fractured arena of CMRS interconnection. The proponents of the theory fail to distinguish the concept of reciprocal compensation between the networks of two carriers from that of the relationship of the paging carrier to a LEC whereby the paging carrier typically does not have transport and termination network facilities over which switched calls to its customers be connected and terminated. Many LECs, including some of the Alliance members, also provide CMRS services, and their short term business plans could be advanced by promotion of a theory that provides free use of LEC network facilities and services. Nonetheless, all Alliance members agree that it is preferable to work toward rational and logical long term interconnection policy and sound conceptual approaches as opposed to continuation of irrational interpretations.

Moreover, the Alliance demonstrates that (1) the parties have misconstrued the technical and interconnection framework under which paging providers obtain tariffed local services from LECs, and the confusion that has resulted has led to an illogical result; (2) the relationship that a paging carrier has with a LEC is the same as that of other local service customers, and paging providers should not be treated differently; (3) typically, paging providers do not provide the transport and termination functions that are necessary conditions for a reciprocal compensation arrangement and, therefore, reciprocal compensation concepts and the specific rules cited by the Bureau should not apply to the local arrangements with paging providers; and (4) paging providers should not be allowed to receive beneficial services from LECs free of charge while all others pay for similar services.

In its December 30 letter, the Bureau acknowledges that the application of Section 51.703(b) is subject to pending petitions for reconsideration before the Commission in CC Docket No. 96-98 and that the Commission is likely to consider the application of this rule and other paging issues further in response to those petitions. The Alliance maintains that the issues presented by the SWBT letters should be considered outside the scope of the

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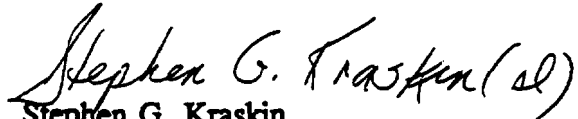
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application of the Section 51 reciprocal compensation rules. In any event, the Alliance urges the Commission to examine further paging-LEC issues in the context of the reconsideration proceeding because the Bureau did not acknowledge or address in its December 30 letter the substance of the issues presented by the Alliance in CPD 97-24.

Accordingly, the Alliance submits its Comments filed in CPD 97-24 for inclusion in the official record in CC Docket 96-98. Rather than bearing the illogical and unfair results of mandatory and rigid reciprocal compensation arrangements, the Alliance submits that, due to the nature of the typical LEC-paging relationship, the formerly existing tariffed local service or similar relationships should continue to govern the compensation arrangements between these entities. In light of the apparent confusion regarding this issue and given the Bureau's cursory response to SWBT, the Alliance respectfully urges the Commission to conduct a full review of the facts and issues discussed by the Alliance before issuing final decisions in the captioned matters.

Should there be any questions, please contact this office.

Respectfully submitted,


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cc: A. Richard Metzger, Chief, Common Carrier Bureau
Paul E. Dorin, Southwestern Bell Telephone

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Requests for Clarification of the)	CPD 97-24
Commission's Rules Regarding)	
Interconnection Between LECs)	
and Paging Carriers)	

COMMENTS OF THE INDEPENDENT ALLIANCE

The Independent Alliance ("Alliance"), a group of smaller local exchange carriers ("LECs"), respectfully submits these comments in response to the *Public Notice*, DA 97-1071, released by the Commission on May 22, 1997 ("*Notice*"). By this *Notice*, the Commission is seeking comments on requests for clarification of the Commission's rules regarding interconnection between LECs and paging operators. Specifically, the Commission seeks comment on a Southwestern Bell Telephone letter filed with the Common Carrier Bureau on April 25, 1997, requesting clarification of these issues ("SWBT Letter"). According to the *Notice*, four Commercial Mobile Services Providers ("CMRS") also filed a letter response to the SWBT Letter on May 16, 1997 ("Paging Response").

The issues raised are related to the fundamental question of whether, or how, the Commission's "reciprocal compensation for the transport and termination of local telecommunications traffic" rules apply to the current, typical arrangements between LECs and paging operators.¹ Confusion, augmented by the manner in which some paging carriers have pursued their obvious business interests, has led to an untenable situation. Paging operators are receiving beneficial services from, and use the facilities of, LECs but have decided unilaterally to

¹ 47 C.F.R. Part 51, Subpart H.

withhold payment for these services and facilities even though they have ordered and continue to receive these services and facilities. If the paging providers canceled the services they receive from LECs, they could not continue to provide their paging services without providing their own alternative network facilities requiring their own investment. These paging operators, however, have found it more convenient to continue to receive LEC services, but to withhold payment for the services. The Alliance fully supports the Southwestern Bell contention that the Commission could not have intended such an illogical result.

I. THE PARTIES HAVE MISCONSTRUED THE ARRANGEMENTS BETWEEN LECs AND PAGING OPERATORS.

The discussion dominating these issues is fraught with half-truths regarding paging operators' arrangements with LECs and has confused the treatment those relationships should receive following the adoption of the Commission's interconnection rules.² To some degree, all of the parties involved in these discussions have been confounded about which rules, if any, apply to the arrangements between LECs and paging operators. The actual functional and technical nature of these arrangements has been critically misconstrued under the rules, and this misfocus has resulted in a series of flawed arguments that have led to the current untenable situation.

As a result, carriers are attempting to place LEC-paging arrangements into a specific interconnection framework that does not, and was never intended to, fit. This mismatch is premised upon the incorrect assumption that the Commission's Part 51-Subpart H transport and termination concepts can rationally or constructively apply to paging-LEC arrangements. The

² *First Report and Order*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 98-96; 11 FCC Rcd 15499 (1996) ("*First Report and Order*"); *Order on Reconsideration*, CC Docket No. 98-96, 11 FCC Rcd 13042 (1996), *petition for review pending and partial stay granted, sub nom. Iowa Utils. Bd. v. FCC*, 109 F.3d 418 (8th Cir. 1996).

concept of reciprocal compensation, however, is not applicable to the service arrangements that LECs provide to paging providers. Reciprocal compensation is defined under Section 51.701 of the Commission's rules as an "arrangement between two carriers . . . in which each of the two carriers receives compensation . . . for the transport and termination on each carrier's network facilities of local telecommunications traffic" 47 C.F.R. § 51.701(e). Transport is defined under these rules as the "transmission and any necessary tandem switching . . . from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC." 47 C.F.R. § 51.701(c). Finally, termination is defined by these rules as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises." 47 C.F.R. § 51.701(d)

Whether the concept of "reciprocal compensation" is applicable to a LEC-paging arrangement is not an issue that can be resolved by broad abstract conceptual discussions. Resolution of the issues requires a deliberate consideration of specific facts. Prudent and rational consideration of the specific facts applicable to LEC-paging arrangements demonstrates that typical paging providers do not perform transport and termination functions. Accordingly, the concept of reciprocal compensation defies rational application to typical service arrangements provided by LECs to paging providers.

For a LEC-originated call to a paging operator, the LEC provides termination because the LEC operates the end office from which "delivery to the called party's premises" is switched. A paging call is last switched at a LEC end office and sent over loops to a demarcation point at an end user's customer premises; i.e. the paging operator's customer premises. The call terminates in the paging operators customer premises equipment ("CPE"). The point of this factual

distinction is that the paging operator performs no termination -- the end office of the LEC terminates the call. In fact, for a call that originates from a wireline end user served by the LEC, the LEC performs both the origination and termination of the call.³

The LEC provides local service to the called party. The paging operator's CPE receives the call and the signaling information from the landline customer. Therefore, the LEC serves both the originating caller and the called party, and the telecommunications service for which termination is provided is completed within the LEC's local network.

It is only after the call has been terminated in the paging provider's CPE by the LEC that the paging provider uses its radio system to transfer the information to the individual pagers of the paging operator's customers. The transmission of this information from the paging provider's CPE to its customer's pager is a second "call." This is consistent with the paging providers' own description of their service. In the initial rulemaking phase of the interconnection proceeding, in an attempt to argue that paging providers are not LECs, paging operators have recognized that their service is one-way and non-interactive communications which consist of two one-way calls.⁴

With this factual operational understanding in mind, the Alliance submits that the

³ For a call that originates somewhere else in the network, the LEC still performs the end office termination.

⁴ One of the signatory CMRS carriers in its letter to the Common Carrier Bureau on May 16, 1997, neglected to point out that it has previously described its paging operation as follows: "Messaging services today are generally one-way non-interactive communications and are neither intended to be, nor do they supplant, basic two-way interactive voice telephone services. . . . Even those narrowband messaging services being introduced presently are not two-way interactive communications. These services consist of two one-way communications and, thus, do not replicate or replace a subscriber's local business or residential phone service." Reply Comments of Paging Networks, Inc. ("PageNet") filed May 30, 1996 in CC Docket No. 96-98 at 7-8. PageNet provides further insight into the technical operation of a paging provider: "even the new so-called two-way messaging services are not interactive, but rather, two separate one-way communications." Comments of PageNet filed May 16, 1996, at 14.

Commission should find and conclude that there is no network-to-network connection between the LEC's network and the paging operator's network that falls within the framework of reciprocal compensation. The paging operator's network is only a simple one-directional CMRS system that takes information stored in its CPE and sends it out over radio signals to be received by the paging operator's customers. There is no physical or real-time connection between the LEC landline caller and the pagers of the paging operator's customers.⁵

While the paging provider does operate a CMRS network, that network neither provides end-office termination nor transport of local traffic. The paging provider's network only provides one-directional radio signaling from or among base stations to pagers. The paging provider's "network" is not even capable of interconnecting its own end users and does not interconnect directly with the public switched network.

The application of the reciprocal compensation framework only makes sense when two networks are exchanging local service area traffic. Paging providers do not have networks that do, or could, exchange local service area traffic. Therefore, the Commission's Part 51-Subpart H rules do not, and as a matter of conceptual application cannot, apply to LEC-paging operator arrangements.

Accordingly, the Common Carrier Bureau's proclamation that LECs are prohibited "from charging CMRS carriers to terminate traffic that originates on the LECs' networks" is a

⁵ The operation of a paging network has significant similarities to the arrangement between LECs and enhanced service providers, most notably including Internet service providers. The two, separate communications that take place in the case of the paging arrangement are similar to the treatment the Commission apparently affords calls to Internet providers. For most information gathering on the Internet, there is one call between the originating customer's computer to the Internet service provider, and there is a second call from the Internet service provider's server to other computers on the Internet. The paging situation cannot be treated as a single "call" unless Internet usage is treated similarly. Under similar treatment the vast majority of calls to Internet service providers would then be interstate usage.

prohibition that makes sense only if and when the paging provider operates a network with which the LEC exchanges local service area traffic, and only if transport and termination of local service area traffic is actually performed by paging providers. In the case of the typical service arrangements provided by LECs to paging carriers, as described above, the prohibition is inapplicable.⁶

II. THE RELATIONSHIP THAT A PAGING CARRIER HAS WITH A LEC IS THE SAME AS THE RELATIONSHIP LECs HAVE WITH OTHER LOCAL SERVICE CUSTOMERS.

As the discussion above demonstrates, the typical arrangement between a LEC and a paging provider is not one of interconnection under Part 51-Subpart H of the Commission's rules. The facts show that the arrangement is one where paging providers buy local tariffed services, or other services functionally equivalent to local tariffed services, equally available to other local exchange users. The services that paging providers have ordered and purchased in the past are services that typical business customers order and use (or services that are functionally equivalent). Unlike cellular carriers that exchange local service area traffic with LECs, paging operators typically obtain service arrangements from LECs that are technically and functionally the same as services obtained by business customers. In some cases, they order and use actual local tariffed services. In other cases, they have entered into arrangements that are similar to local tariffed services.

These services in the most uncomplicated situations are identical or functionally equivalent to simple "direct-inward-dial" ("DID") business-line services. A paging provider orders a

⁶ The paging carriers are also wrong when they state that "a LEC must bear the costs it incurs in transporting calls -- including paging calls - that originate on its network and terminate on the network of a paging provider." Paging Response at p. 2. They are wrong because there is no paging provider network to terminate such a call.

quantity of local loops between the LEC's central office and its designated premises which the paging provider uses like any other business customer to receive local calls dialed to a quantity of numbers (corresponding to the individual pagers) greater than the number of connecting loops.⁷ The Alliance submits that because the technical characteristics of the services received, and facilities used, are functionally identical to other business customers utilizing DID services, the charges should be the same. It is the paging provider that receives the benefit of the loop facilities that extend between the central office and its premises, and as with business customers, the paging carrier should be responsible for charges for those facilities. Instead of providing their own transport and termination facilities, paging providers apparently found it more economical to order DID services from LECs in the past. Now, utilizing the Common Carrier Bureau's proclamation as a shield, paging operators are refusing to pay the charges associated with the services LECs provide.

The charges that LECs assess for DID services provided to paging providers do not constitute invalid charges under reciprocal compensation rules for two reasons. First, "charges for traffic" denotes a specific charge based on minutes of use. DID arrangements typically do not apply a minutes-of-use charge. Second, according to the rules, the prohibition against charging for traffic applies only under a reciprocal compensation arrangement for the transport and termination of local service traffic which, as explained above, is not the situation here.

Another conceptually flawed issue is related to the Commission's discussion of prohibitions against "discriminatory 'code opening' fees to telecommunications carriers, such as

⁷ The loops used in these applications are called DID trunks.

paging carriers. . . ."⁸ If paging carriers hypothetically were to operate networks and provide termination in end offices that could "house" numbers according to the North American Numbering Plan, they would be free, without discrimination, to pursue and acquire numbers either directly or through the administrative assistance of LECs.⁹ However, paging providers have distorted the Commission's discussion regarding "code opening fees," equating the prior experience of cellular carriers trying to acquire NXX codes to that of DID charges that LECs typically apply to DID users.¹⁰

LECs typically apply a multi-component rate structure to DID service customers. The sum of the components is intended to represent a reasonable assessment to a specific DID customer for the relative amount of local network services that the customer receives. One component usually involves charges for the loop facilities that connect from the central office to the CPE of the DID customer. A second component is often a capacity-based charge designed to represent the relative amount of local network capacity demand that the DID end user customer

⁸ *Second Report and Order and Memorandum Opinion and Order*; FCC 96-333; In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Order by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois; CC Docket Nos. 96-98, 95-185, 92-237; NSD File No. 96-8; and IAD File No. 94-102, released August 8, 1996, at para. 333 ("*Second Report and Order*").

⁹ Of course, as explained above, paging providers do not typically operate such networks. The original discussion of numbers and central office codes was in the context of cellular operators that do have end offices and networks. See *Memorandum Opinion and Order*, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 R.R.2d, 1275, 1284 (1986).

¹⁰ In the *Second Report and Order*, the Commission also notes that paging carriers are protected against discriminatory fees even though they "are not providers of telephone exchange service or telephone toll service. . . ." *Second Report and Order* at para. 333.

places on the local network. The charges for this second component are often based on the quantity of numbers the DID customer needs, representing a measure of the amount of local service that one customer uses relative to another.¹¹ Therefore, charges for local network capacity demand based on a unit related to the quantity of telephone numbers used does not represent "recurring charges solely for the use of numbers," the object of the Commission's discussion of discriminatory fees.¹² Instead, DID number charges are a component of local service.¹³ These charges are applied to all customers that use functionally equivalent DID services. Therefore, the charges satisfy the prohibition requirement against discriminatory fees.

Armed with a perhaps purposefully confused and misplaced application of reciprocal compensation concepts to DID and other similar service arrangements, some CMRS providers have argued that they should not pay DID service charges or charges for local network connecting facilities. Some paging carriers have stopped paying all LEC charges. The bottom line is that some CMRS providers are receiving DID service and other facilities use from LECs free of charge or at a much reduced level of charges. Some paging carriers are adding insult to

¹¹ The conceptual framework for local exchange service rate structures neither conforms to the simplistic approaches under reciprocal compensation nor the apparently rigid manner in which the concept has been applied. Charges to local service customers do not necessarily represent only charges for originating calls as would be the apparent result under a forced reciprocal compensation framework. Customers receive benefits from both the ability to originate and to terminate local exchange calls, and the charges and pricing structures recognize these benefits. Under a rigidly applied reciprocal compensation approach, a LEC can only provide termination to another carrier which is responsible for charges for termination which the originating carrier may only effectively recover from the originating caller.

¹² *Second Report and Order* at para. 333.

¹³ However, if end users are allowed to unilaterally determine how many numbers will be assigned to their local service, without any charge, DID customers, paging providers, or other end users would have the ability, perhaps chaotically, to exhaust the LECs' assigned number resources.

injury by suggesting that LECs should not only provide free service arrangements, but should also pay the paging provider each time the paging provider uses the LEC's network to receive a call that ultimately signals a pager!¹⁴ Obviously, this contention defies basic reason.

III. CONCLUSION

Accordingly, the Alliance respectfully submits that this entire subject requires careful and fact specific evaluation by the Commission. At a minimum, the Commission should clarify that the Common Carrier Bureau proclamation was not intended to permit paging providers to avoid payment for local service arrangements they have ordered and received. If the paging providers do not want the services they have ordered and receive, then they should cancel these arrangements, discontinue service, and make arrangements to deploy their own network facilities to transport and terminate calls from points of connection with LECs.

Respectfully Submitted,

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¹⁴ "Indeed, the Commission has found that paging providers, like all other telecommunications carriers, are entitled to compensation from a LEC for terminating traffic that originates on the LEC's network." Paging Response at p. 3. Of course, as explained above, paging providers do not provide termination because they do not have networks that provide transport and termination.